



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 2, 1991

Honorable Tim Curry
Criminal District Attorney
Tarrant County
401 West Belknap Street
Fort Worth, Texas 76196-0201

OR91-459

Dear Mr. Curry:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 13438.

The law librarian of the Tarrant County Law Library (the library) has received a request for information categorized into 12 categories. The request includes information relating to alleged crimes committed in the library; financial status of the library; use of the name of the library in motion pictures; meetings, assemblies, and conventions attended by library staff members and expenses therefrom; membership of library staff in professional organizations; membership of the library committee; communications between certain employees of the library; the address of a certain library employee; applications for compensation time; a certain facsimile document; requestor's request to decline pay raise; and material prepared for the use of court coordinators. You have already released or intend to release much of the requested information. You claim some of the information does not exist or is maintained by another governmental body. Where the requested information is maintained by another governmental body, you have directed the requestor accordingly. Finally, you claim that one memo is excepted from required public disclosure by sections 3(a)(3), 3(a)(7), and 3(a)(11) of the Open Records Act and a change of address form by sections 3(a)(1), 3(a)(2), and 3(a)(17).

Section 3(a)(3) excepts from disclosure

information relating to litigation of a criminal or civil nature and settlement negotiations, to which the state or political subdivision is, or may be, a party, or to which an officer or employee of the state or political subdivision, as a consequence of his office or employment, is or may be a party, that the attorney general or the respective attorneys of the various political subdivisions has determined should be withheld from public inspection.

Section 3(a)(3) enables a governmental entity to protect its position in litigation by requiring opposing parties to use the discovery process to obtain information relating to litigation. Attorney General Opinion JM-1048 (1989). A section 3(a)(3) claim requires that (1) you are now, or will likely be, a party to civil or criminal litigation, and (2) the requested documents constitute information relating to that litigation. Given the requestor's repeated threats to file suit against the library, we believe litigation may be reasonably anticipated. The document you claim excepted by section 3(a)(3) clearly relates to the anticipated litigation and may be withheld from required public disclosure. Because we resolve this part of your request under section 3(a)(3), we need not address the applicability of sections 3(a)(7) and 3(a)(11) to this information at this time.

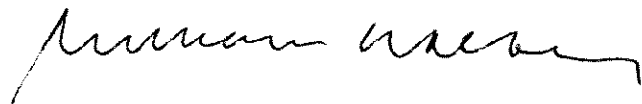
You claim the change of address form is excepted from required public disclosure by sections 3(a)(1), 3(a)(2) and 3(a)(17). Open Records Decision No. 400 (1983) held that the test for section 3(a)(1) privacy elaborated in *Industrial Found. of the South. v. Texas Indus. Accident Bd.*, S.W.2d 668 (Tex. 1976), cert. denied, 430 U.S. 931 (1977), is applicable to section 3(a)(2). In *Industrial Foundation* the Texas Supreme Court ruled that common law privacy excepts only "information contain[ing] highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person," provided "the information is not of legitimate concern to the public." 540 S.W.2d 685. Home addresses and telephone numbers are generally not held to be "intimate" or "embarrassing" information. Because the home address and telephone number in question here are those of a government employee, they might reasonably be of legitimate concern to the public. The information you have submitted has specifically been held disclosable in previous open records decisions for purposes of section 3(a)(1) and 3(a)(2). See Open Records Decision No. 455 (1987). Accordingly, the change of address form may not be withheld under sections 3(a)(1)

and 3(a)(2).

You also claim that the information included on the change of address form is excepted from disclosure by section 3(a)(17), which excepts "the home addresses and home telephone numbers of each official and employee and each former official and employee of a governmental body except as otherwise provided by Section 3A of this Act." Section 3A(a) provides that section 3(a)(17) may be applied only when an employee indicates that he does not want his home address and telephone number publicly disclosed. Such indication must be made in signed writing not later than 14 days after the date on which the employee begins employment with the governmental body. Section 3A(a) states that where an employee "fails to report within the period established by this section, the information is subject to public access." Section 3A(b) provides the employee an opportunity to change the nature of disclosure of such information, provided such request is made in writing to the main personnel officer of the governmental body. You have communicated to this office that the employee to whom the request for information relates has requested that her home address and telephone number be withheld from public disclosure. You advise that this request was made subsequent to the open records request at issue here. Open Records Decision No. 530 (1989) held that a governmental body may not solicit a response from its employees under Section 3A in response to a pending open records request; the character of requested information as public under section 3A and section 3(a)(17) is determined as of the time the request for information is made. Accordingly, you may not withhold the change of address form under section 3(a)(17). The form must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling please refer to OR91-459.

Yours very truly,

A handwritten signature in black ink, appearing to read "William Walker", with a long horizontal flourish extending to the right.

William Walker
Assistant Attorney General
Opinion Committee

WW/GK/lcd

Ref.: ID#s 13438, 13574

cc: Mr. George Vernon Chiles
2800 Jennings
Fort Worth, Texas 76110